

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BIRCH COMMUNICATIONS, INC.)	WC Docket No. 09-197
)	
Petition for Designation as an Eligible)	WC Docket No. 11-42
Telecommunications Carrier pursuant to)	
Section 214(e)(6) of the Communications Act)	
for Lifeline Support Only and Compliance Plan)	
<hr/>)	

**BIRCH COMMUNICATIONS, INC.
PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO SECTION 214(e)(6) OF THE COMMUNICATIONS ACT
FOR LIFELINE SUPPORT ONLY AND COMPLIANCE PLAN**

Christopher J. Bunce
Vice President, Legal and General Counsel
Birch Communications, Inc.
2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
chris.bunce@birch.com

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Dated: April 27, 2012

Its Attorneys

TABLE OF CONTENTS

	<u>Page</u>
I. OVERVIEW OF BIRCH.....	2
II. THE COMMISSION HAS JURISDICTION OVER BIRCH’S DESIGNATION REQUEST.....	3
III. BIRCH MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE ACT AND SECTION 54.201(d) OF THE COMMISSION’S RULES	3
A. Birch Will Offer the Services Supported by Federal Universal Service	3
B. Birch Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement.....	5
C. Birch Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution	6
IV. BIRCH MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION’S RULES	7
A. Birch Will Comply with the Service Requirements Applicable to Lifeline Support	7
B. Birch Will Remain Functional in Emergency Situations.....	8
C. Birch Will Satisfy Applicable Consumer Protection and Service Quality Standards.....	9
D. Birch Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission’s Rules	9
E. Birch Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers	10
V. BIRCH MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION’S RULES	12
A. Birch Will Make Lifeline Service Available as Defined under the Commission’s Rules	13
B. Birch Will Publicize the Availability of Lifeline Service.....	13

C.	Birch Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC	13
D.	Birch Will Comply with the Commission’s De-Enrollment Procedures.....	14
VI.	ANTI-DRUG ABUSE CERTIFICATION	14
	CONCLUSION.....	15
Verification		
Exhibit 1 - Compliance Plan		
Attachment A to Exhibit 1 - Draft Enrollment and Certification Form		
Exhibit 2 - State Commission Statements on Jurisdiction		

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BIRCH COMMUNICATIONS, INC.)	WC Docket No. 09-197
)	
Petition for Designation as an Eligible)	WC Docket No. 11-42
Telecommunications Carrier pursuant to)	
Section 214(e)(6) of the Communications Act)	
for Lifeline Support Only and Compliance Plan)	
<hr/>)	

**BIRCH COMMUNICATIONS, INC.
PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO SECTION 214(e)(6) OF THE COMMUNICATIONS ACT
FOR LIFELINE SUPPORT ONLY AND COMPLIANCE PLAN**

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits this Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”).³ Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).⁴

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ Birch files this Petition in accordance with the rules adopted by the Commission on February 6, 2011 in WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking (“*Lifeline Reform Order*”).

⁴ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

I. OVERVIEW OF BIRCH

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services. The Birch family of companies currently serves approximately 118,000 customers throughout 38 states.⁵

For numerous years, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T. Birch serves approximately 1800 wireline Lifeline customers at this time. Birch is therefore intimately familiar with the Commission’s eligibility and verification procedures applicable to Lifeline service offerings.

Birch now seeks to build on its existing expertise to provide prepaid wireless services to eligible Lifeline customers. Birch currently provides services using its state-of-the-art, feature rich IP-based network, and relies on resold services as needed to supplement its network. For purposes of providing its prepaid wireless Lifeline product, Birch will resell the wireless services of Sprint, which provides wholesale capacity to many wireless resellers. Like several other prepaid wireless providers that have received ETC designation, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”).

⁵ Specifically, the Birch family of companies offers service in the following states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

II. THE COMMISSION HAS JURISDICTION OVER BIRCH'S DESIGNATION REQUEST

Birch certifies that each state for which Birch seeks ETC designation from the Commission has asserted that it lacks jurisdiction over the wireless services that Birch seeks to provide as a Lifeline-only ETC. Birch therefore seeks ETC designation from the Commission pursuant to Section 214(e)(6).⁶ Attached as **Exhibit 2** to this Petition are the relevant orders and/or examples of letters from the Alabama, Florida, North Carolina, and Tennessee state commissions asserting to a lack of jurisdiction over ETC designation for wireless services.

III. BIRCH MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE ACT AND SECTION 54.201(d) OF THE COMMISSION'S RULES

Under Section 214(e)(1) of the Act and Section 54.201(d) of the Commission's rules, a common carrier⁷ may be designated as an ETC if it (1) offers the services supported by federal universal service as determined by the Commission, (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3) advertises the availability of such services and the relevant charges using media of general distribution.⁸ As set forth below, Birch meets these requirements.

A. Birch Will Offer the Services Supported by Federal Universal Service

Pursuant to Section 54.101(a) of the Commission's rules, as modified by the *Lifeline Reform Order*, carriers seeking ETC designation must provide voice telephony services.⁹

⁶ 47 U.S.C. § 214(e)(6).

⁷ Birch is a common carrier by virtue of its current provision of CLEC and IXC services, and will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provide for profit and makes interconnected service available to the public).

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁹ 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48.

Specifically, eligible Lifeline telephony services must provide voice grade access to the public switched telephone network (“PSTN”) or its functional equivalent, minutes of use for local service provided at no additional charge, access to emergency 911 and enhanced 911 service in locations where implemented, and toll limitation at no charge (subject to certain requirements and limitations).¹⁰ Birch certifies that its prepaid wireless Lifeline service offering satisfies the Commission’s definition of voice telephony service, and it will therefore provide all services designated for support by the Commission.

Birch’s prepaid wireless Lifeline service offering will provide voice grade access to the PSTN through its provision of resold wireless services from Sprint. As described below, Birch’s prepaid wireless Lifeline service offering will provide 250 minutes of use to eligible consumers at no additional charge. In addition, as explained below, Birch’s prepaid wireless Lifeline service offering will provide consumers with access to 911 and enhanced 911 to the extent local governments have implemented such services. Although Birch understands it has an independent obligation to provide 911 and E911 services as a reseller,¹¹ Birch will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

With respect to toll limitation service, the *Lifeline Reform Order* eliminated the requirement to provide toll limitation services if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.¹² As explained more below, Birch’s prepaid wireless Lifeline service offering will be a nationwide calling plan, and will not distinguish between toll and non-toll calls. Consumers, however, may implement toll control for international calls to the extent they seek that capability. Moreover, consumers purchasing

¹⁰ *Lifeline Reform Order* ¶ 48.

¹¹ 47 C.F.R. § 20.18(m).

¹² *Lifeline Reform Order* ¶ 49.

Birch's prepaid wireless Lifeline service offering will have the ability to monitor their minute usage and balances from their handset, online, or through customer service.

B. Birch Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.¹³ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.¹⁴ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.¹⁵ Birch certifies that it meets the requirements for conditional forbearance.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. As noted above, Birch will rely on its contractual arrangement with Sprint to

¹³ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

¹⁴ *Lifeline Reform Order* ¶ 368.

¹⁵ *Lifeline Reform Order* ¶ 368.

provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.¹⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

In further support of Birch's eligibility for the conditional grant of forbearance from the facilities requirement, Birch provides its Compliance Plan in **Exhibit 1** in accordance with the requirements of the *Lifeline Reform Order* and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.¹⁷

C. Birch Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify for the service.¹⁸ Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.¹⁹ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be

¹⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

¹⁷ WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("Public Notice").

¹⁸ 47 C.F.R. § 54.405(b).

¹⁹ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.²⁰

IV. BIRCH MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION'S RULES

Section 54.202 of the Commission's rules contains certain additional requirements for a common carrier²¹ to be designated as an ETC. As set forth below, Birch satisfies each of those requirements.

A. Birch Will Comply with the Service Requirements Applicable to Lifeline Support

Section 54.202(a)(1) of the Commission's rules requires a common carrier seeking ETC designation to (1) certify that it will comply with the service requirements applicable to the support that it receives and (2) submit a five-year plan for proposed improvements or upgrades to

²⁰ *Lifeline Reform Order* ¶¶ 274-282.

²¹ Birch is a common carrier by virtue of its current provision of CLEC and IXC services, and will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provide for profit and makes interconnected service available to the public).

the applicant's network unless the applicant is seeking Lifeline support only.²² Birch seeks ETC designation for Lifeline support only. Birch hereby certifies that it will comply with the service requirements applicable to Lifeline support. Given that Birch seeks designation for Lifeline support only, a five-year network improvement plan is no longer necessary.²³

B. Birch Will Remain Functional in Emergency Situations

Section 54.202(a)(2) of the Commission's rules requires a common carrier seeking ETC designation to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.²⁴ Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations.

Birch's MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency

²² 47 C.F.R. § 54.202(a)(1).

²³ *Lifeline Reform Order* ¶ 386.

²⁴ 47 C.F.R. § 54.202(a)(2).

situations.²⁵ As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.²⁶ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

C. Birch Will Satisfy Applicable Consumer Protection and Service Quality Standards

Section 54.202(a)(3) of the Commission's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.²⁷ As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement.

D. Birch Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission's Rules

Section 54.202(a)(4) of the Commission's rules requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules.²⁸ The Commission stated that the "relevant considerations" for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund

²⁵ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

²⁶ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁷ 47 C.F.R. § 54.202(a)(3).

²⁸ 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* ¶ 387.

disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.²⁹

Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. Moreover, as discussed above, Birch has been providing wireline Lifeline services as a non-ETC reseller for numerous years. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from "non-Lifeline" services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to numerous wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a MVNO. Sprint is a large, nationwide carrier, and serves several other MVNOs offering wireless Lifeline products.³⁰ Birch's partnership with Sprint further demonstrates Birch is technically capable of providing a prepaid wireless Lifeline service.

E. Birch Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers

Section 54.202(a)(5) of the Commission's rules require a common carrier seeking ETC designation for Lifeline support to submit information describing the terms and conditions of the

²⁹ *Lifeline Reform Order* ¶ 388.

³⁰ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.³¹ At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to the customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices³²

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

Additional minutes

Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Birch's planned prepaid wireless Lifeline service offering is consistent with the Act's requirement that consumers have access to quality services at "just, reasonable, and affordable rates,"³³ and is consistent with the Commission's findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.³⁴

³¹ 47 C.F.R. § 54.202(a)(5).

³² Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

³³ 47 U.S.C. § 254(b)(1).

³⁴ *Lifeline Reform Order* ¶ 317.

F. Designation of Birch as a Lifeline-Only ETC Is in the Public Interest

Section 54.202(b) of the Commission's rules requires the Commission make a public interest finding prior to making an ETC designation.³⁵ Designation of Birch as an ETC for Lifeline support serves the public interest. Birch's ETC designation will bring another competitive alternative to low-income consumers in the Designated Service Area, and will exert further competitive pressures on existing wireless Lifeline providers operating in the Designated Service Area. Birch seeks to make it easier for low-income consumers located within the Designated Service Area to receive affordable telecommunications services that are comparable to those enjoyed by other consumers. Birch's ETC designation serves the public interest by providing services to a portion of the public that may not otherwise be able to obtain telecommunications services due to insufficient credit, immigrant status, or living situation. Prepaid wireless services also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Birch as a Lifeline-only ETC.³⁶

V. BIRCH MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION'S RULES

Under Section 54.405 of the Commission's rules, an ETC has certain obligations to offer Lifeline service.³⁷ Birch understands these obligations and will meet them as described below.

³⁵ 47 C.F.R. § 54.202(b).

³⁶ 47 U.S.C. § 254.

³⁷ 47 C.F.R. § 54.405.

A. Birch Will Make Lifeline Service Available as Defined under the Commission’s Rules

Section 54.405(a) of the Commission’s rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the Commission’s rules,³⁸ to qualifying low-income consumers.³⁹ Birch certifies that its prepaid wireless Lifeline service offering will conform to the definition of “Lifeline” in the Commission’s rules.

B. Birch Will Publicize the Availability of Lifeline Service

Section 54.405(b) of the Commission’s rules requires an ETC to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.⁴⁰ As described above in Section III.C., Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to eligible consumers.

C. Birch Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC

Sections 54.405(c) and (d) of the Commission’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the ETC.⁴¹ As noted above in Section III.C., Birch will ensure that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.⁴² Birch will also ensure that all materials describing its prepaid wireless Lifeline service offering utilize the “NOW

³⁸ 47 C.F.R. § 54.401.

³⁹ 47 C.F.R. § 54.405(a).

⁴⁰ 47 C.F.R. § 54.405(b).

⁴¹ 47 C.F.R. § 54.405(c), (d).

⁴² 47 C.F.R. § 54.405(c).

Communications” brand as the name of the ETC providing services.⁴³ Birch understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.⁴⁴

D. Birch Will Comply with the Commission’s De-Enrollment Procedures

Section 54.405(e) of the Commission’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁴⁵ Birch will comply with the Commission’s de-enrollment procedures as described more fully in Birch’s compliance plan set forth in **Exhibit 1**. As discussed in Birch’s compliance plan, Birch will de-enroll Lifeline customers for duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment procedures in place.

VI. ANTI-DRUG ABUSE CERTIFICATION

Birch certifies that, pursuant to Sections 1.2001 through 1.2003 of the Commission’s rules, that neither Birch nor its subsidiaries, affiliates, officers, directors, or persons holding 5% or more of its outstanding stock, are subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.⁴⁶

⁴³ 47 C.F.R. § 54.405(d). As noted previously, Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

⁴⁴ 47 C.F.R. § 54.405(c).

⁴⁵ 47 C.F.R. § 54.405(d).

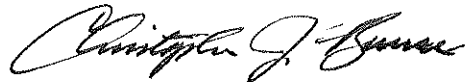
⁴⁶ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.



Christopher J. Bunce
Vice President, Legal and General Counsel
Birch Communications, Inc.
2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
chris.bunce@birch.com

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Dated: April 27, 2012

Its Attorneys

Verification

I, Gregory Corwin, Director of Marketing of Birch Communications, Inc., hereby certify that I have read the foregoing Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only, and certify under penalty of perjury that the statements in the foregoing are true, complete, and correct to the best of my knowledge, information, and belief.

Date:

4/23/2012

A handwritten signature in black ink, appearing to read 'Gregory Corwin', written over a horizontal line.

Gregory Corwin
Director, Marketing
Birch Communications, Inc.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch Communications, Inc. ("Birch") provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*¹ and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.² Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

(1) Information about the carrier and the Lifeline plans it intends to offer:

(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.³ Birch's wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch's international 214 authority and is registered to provide interstate telecommunications services.⁴ Birch's wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.⁵ The following wholly-owned

¹ WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

² WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

³ IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

⁴ FCC Filer ID 828502.

⁵ IB File No. ITC-214-19990701-00441.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.⁶ Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”⁷ Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.⁸

The Birch family of companies either offer service or are certificated to offer telecommunications services as competitive local exchange carriers (“CLECs”) and intrastate interexchange carriers (“IXCs”) in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon,

⁶ Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

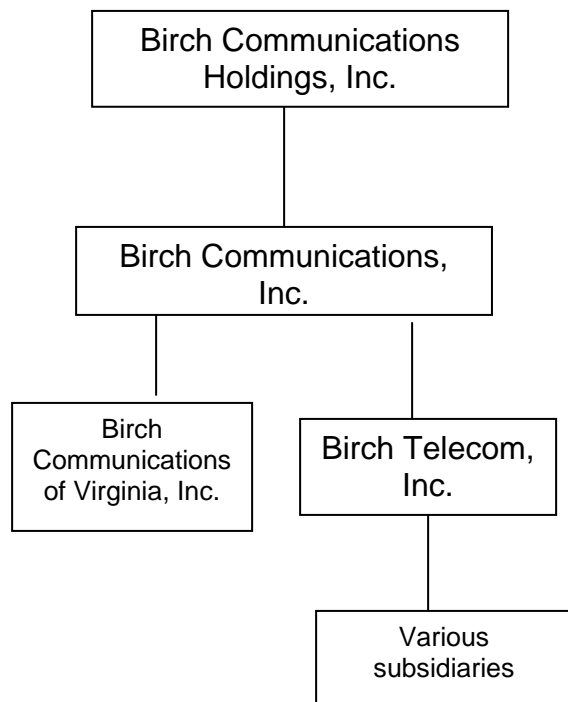
⁷ These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

⁸ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch’s organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest⁹ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals

⁹ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.¹⁰ Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. Moreover, Birch has been providing wireline Lifeline services as a non-ETC reseller for numerous years. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

¹⁰ *Lifeline Reform Order* ¶ 388.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

wireless Lifeline products.¹¹ Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged Internet Protocol ("IP") solutions, and related telecommunications and IT services throughout its 38-state service territory.

(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices¹²

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

Additional minutes

Minutes	Price
200	13.95

¹¹ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

¹² Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

(e) all other certifications required under newly amended section 54.202 of the Commission's rules.

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;¹³ (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;¹⁴ (3) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;¹⁵ (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;¹⁶ (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;¹⁷ and (6) submit information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.¹⁸

¹³ 47 C.F.R. § 54.202(a)(1)(i).

¹⁴ 47 C.F.R. § 54.202(a)(1)(ii).

¹⁵ 47 C.F.R. § 54.202(a)(2).

¹⁶ 47 C.F.R. § 54.202(a)(3).

¹⁷ 47 C.F.R. § 54.202(a)(4).

¹⁸ 47 C.F.R. § 54.202(a)(5).

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.¹⁹

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁰ As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.²¹ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

¹⁹ *Lifeline Reform Order* ¶ 386.

²⁰ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

²¹ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.²²

(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC.

Set forth as Attachment A to this Exhibit 1 is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the FCC or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms.

Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a

²² 47 C.F.R. § 54.202(a)(3).

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

Texas consumer's eligibility for Lifeline service. Where available, Birch will utilize state-level databases to verify eligibility for its prepaid wireless Lifeline service offering until a national database is available. Where state-level database technology is not available, potential customers will send their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, or electronic mail). In some states, Birch utilizes third-party retailers or sales offices to sign-up new subscribers, and eligibility information can be provided in-person by the potential subscriber. Eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. As part of confirming a potential customer's eligibility, Birch will also confirm that there is no Lifeline duplication using the process discussed under (5) below.

Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.²³

Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules. In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes third-party verification (or "TPV") to enroll customers and confirm their certification for Lifeline eligibility in addition to paper forms. Birch plans to utilize TPV for its prepaid wireless Lifeline service product, which the

²³ *Lifeline Reform Order* ¶ 101.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

Commission has recognized is an acceptable method for obtaining such information,²⁴ as well as utilize paper forms for enrollment.

First, Birch will obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Next, Birch will utilize its TPV script or the paper form to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before moving any further in the TPV script²⁵ or each to be initialed by the customer on the paper form:

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;

²⁴ *Lifeline Reform Order* ¶ 169.

²⁵ The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;
- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers.

Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.²⁶ Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years.

(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.²⁷ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

²⁶ 47 C.F.R. § 54.405(e)(4).

²⁷ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

(4) A detailed explanation of how the carrier will comply with the Commission's marketing and disclosure requirements for participation in the Lifeline program;

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify for the service.²⁸ Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²⁹ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses,

²⁸ 47 C.F.R. § 54.405(b).

²⁹ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³⁰

(5) A detailed explanation of the carrier’s procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier’s toll limitation service, if applicable, and the carrier’s non-usage policy, if applicable.

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.³¹

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the

³⁰ Lifeline Reform Order ¶¶ 274-282.

³¹ Lifeline Reform Order ¶ 257.

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.³² To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber’s de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission’s 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.³³ Further, Birch will de-enroll and not seek

³² 47 C.F.R. § 54.405(e)(2); *see also Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

³³ 47 C.F.R. § 54.404(b)(10).

EXHIBIT 1
Compliance Plan
Birch Communications, Inc.

reimbursement for any consumer whose service is inactive for a consecutive 60-day period.³⁴

Birch will define “usage” consistent with Commission rules. Specifically, the following activities will constitute “usage” of Birch’s prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber’s service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.³⁵ Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer’s “usage” as defined herein and in the Commission’s rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.³⁶

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system.

³⁴ *Lifeline Reform Order* ¶ 257.

³⁵ 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

³⁶ *Lifeline Reform Order* ¶ 262.

Attachment A to Compliance Plan

Draft Enrollment and Certification Form



Lifeline Certification

Three easy steps:

- (1) Complete certification form (on page 1);
- (2) Locate documentation of your participation in a qualifying program (documentation requirements are on page 2)
- (3) Fax, or mail the completed certification form and document to NOW Communications (contact information on page 2).

If you have any questions please contact NOW customer service at
[TBD]

Lifeline Certification Form

Page 1

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose. See reverse for documentation requirements and submission instructions.

Things to know about the Lifeline Program:

- (1) Lifeline is a Federal benefit that is not transferrable to any other person;
- (2) Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers;
- (3) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- (4) Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ MI: _____ Last Name: _____ Date of Birth: _____
Last Four Digits of Social Security Number or Tribal ID Number: _____ Contact Telephone Number: _____

Residential Address:

Must be a street address (not a P.O. Box) and your principal residence.

Address Line 1: _____

Address Line 2: _____

City, State and Zip: _____

This address is: ☐ Permanent ☐ Temporary ☐ A shared, multi-household residence

If temporary, your address must be certified or updated every 90 days.

Billing Address:

May contain a P.O. Box.

☐ Check here if the billing address is the residential address.

Address Line 1: _____

Address Line 2: _____

City, State and Zip: _____

I hereby certify that I qualify to participate in at least one of the following programs (*check all that apply*):

Please see the related documentation requirements on the reverse side.

- (Initial) _____
- _____ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps
- _____ Supplemental Security Income (SSI)
- _____ Federal Public Housing Assistance (FPHA) or Section 8
- _____ Low Income Home Energy Assistance Program (LIHEAP)
- _____ National School Lunch Program's free lunch program
- _____ Temporary Assistance for Needy Families (TANF)
- _____ Medicaid

Tribal Land Residents Only: I hereby certify that I reside on federally recognized tribal lands and that I qualify to participate in at least one of the programs listed above or the following programs (*check all that apply*):

- (Initial) _____
- _____ Bureau of Indian Affairs General Assistance
- _____ Tribally administered Temporary Assistance for Needy Families (TTANF)
- _____ Head Start (only participants that qualified based on meeting the income qualifying standard)
- _____ Food Distribution Program on Indian Reservation (FDPIR)

I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.

Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.

(Initial) _____

I certify, under penalty of perjury: Initial by Each Certification

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform NOW within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service.

I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that NOW will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then my Lifeline service will be terminated.

My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

I authorize NOW and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to NOW and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

APPLICANT SIGNATURE: _____

DATE: _____

FOR OFFICE USE ONLY Company Representative Name: _____

Documentation Verified: _____

Representative Signature: _____

Date: _____

DOCUMENTATION REQUIREMENTS

You are required to provide proof of your participation in the programs you identified or proof of your qualifying income.

IF YOU ARE QUALIFYING BASED ON ELIGIBILITY TO PARTICIPATE IN A PROGRAM, YOU MUST PROVIDE COPIES OF ONE OR MORE OF THE FOLLOWING DOCUMENTS:

- (1) current or prior year's statement of benefits from qualifying assistance program;
- (2) notice or letter of participation in a qualifying assistance program;
- (3) program participation documents; or
- (4) official document demonstrating receipt of benefits from a qualifying assistance program.

IF YOU ARE QUALIFYING BASED ON INCOME, YOU MUST PROVIDE COPIES OF ONE OR MORE OF THE FOLLOWING DOCUMENTS:

Prior year's state, federal or tribal tax return, a Social Security benefits statement, a Veterans Administration benefits statement, a Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance, a Retirement/Pension benefit statement, a divorce decree or child support document, an Unemployment/Workers Compensation benefits statement, a current income statement from employer or paycheck stub. If you provide documentation other than your prior year's state, federal, or tribal tax return, you must submit three consecutive months worth of the same type of document within the current calendar year.

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$ 52,502
For every additional member of your household, add \$4,950	

SUBMITTED DOCUMENTS WILL BE RETURNED AT YOUR REQUEST OR DESTROYED BY NOW COMMUNICATIONS.

SUBMISSION INSTRUCTIONS

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY AND CAN BE SUBMITTED BY:

MAIL

NOW Communications

[TBD]

FAX

[TBD]

IF YOU HAVE QUESTIONS, PLEASE CALL [TBD] FOR ASSISTANCE.

NOTICES

[Space reserved for additional notices or information postings, including state specific notices or carrier information]

NOW Communications offers Lifeline and Link Up services only in areas where it has been designated as an Eligible Telecommunications Carrier.

EXHIBIT 2

State Commission Statements regarding Jurisdiction for Wireless ETC Designation

Alabama Public Service Commission

Orders

PINE BELT CELLULAR, INC. and PINE BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or clarification regarding the jurisdiction of the Commission to grant ETC status to wireless carriers.

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214 (e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

Press the Back Arrow to Return to the Search

Return to PSC Home - <http://www.psc.state.al.us/index.htm>

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

June 2, 2011

Mr. Douglas D. Orvis, II
Bingham McCutchen, LLP
2020 K. Street NW
Washington, DC 20006-1806

Re: Undocketed – TAG Mobile, LLC's ETC Designation

Dear Mr. Orvis:

We received your May 25, 2011 letter requesting a statement that the Florida Public Service Commission's jurisdiction to grant ETC designation to TAG Mobile, LLC changed with Governor Scott's approval of HB 1231, the telecom reform bill.

This letter acknowledges that Governor Scott's approval of HB 1231, the telecom reform bill, revises Chapter 364, Florida Statutes, thereby changing the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, including the revisions by HB 1231 for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider TAG Mobile, LLC's bid for ETC status.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Curtis Kiser".

S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

00002203.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

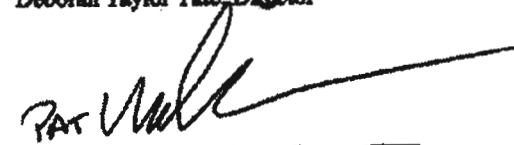
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")